

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,)	
)	Civil Action No. 05-10917 PBS
Plaintiff,)	
)	
v.)	
)	
J.T. POSEY COMPANY,)	
)	
Defendant.)	

**DECLARATION OF DOUGLAS H. MORSEBURG
IN FURTHER SUPPORT OF MOTION TO TRANSFER**

I, Douglas H. Morseburg, declare:

1. I am an attorney at law duly licensed to practice before all of the courts of the State of California and I am admitted to practice in this matter pro hac vice. I am an attorney at Sheldon & Mak and am one of the attorneys responsible for representing J.T. Posey Company in this matter. I have personal knowledge of the facts set forth below and, if called as a witness and properly sworn, I could and would testify thereto from my own personal knowledge, except as where stated on information and belief and, as to those facts, I believe them to be true. I make this declaration in further support of Posey's motion to transfer venue of the within matter to the U.S. District Court for the Central District of California, Western Division.

2. Attached hereto as Exhibit "A" is a true and correct copy of part of the Answer, Counterclaim and Jury Demand filed by The HipSaver Company in the California case Posey filed against HipSaver. Posey requests that the Court to take judicial notice of HipSaver's statements in paragraph 4, on page 2.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed this 7th day of July, 2005 at Pasadena, California.

/s/ Douglas H. Morseburg
Douglas H. Morseburg

EXHIBIT “A”

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19 COMPANY, INC.

20
21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA

23 J.T. POSEY COMPANY,

24 Plaintiff,

25 vs.

26 THE HIPSAVER COMPANY, INC.,

27 Defendant.

CASE NO.: CV05-3705 FMC

DEFENDANT'S ANSWER,
COUNTERCLAIMS AND JURY
DEMAND

28 COMES NOW DEFENDANT, The HipSaver Company, Inc. ("HipSaver")
submits this Answer and Counterclaims contemporaneously with its Motion to
Dismiss, Stay or Transfer this action pursuant to the first-to-file rule. The
Counterclaims set forth below restate the claims first set forth in the earlier
Massachusetts action.¹

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¹ See *The HipSaver Company, Inc. v. J.T. Posey Company*, Civil Action No. 05-10917 PBS, filed May 4, 2005.

1 Defendant HipSaver hereby answers the Complaint for Declaratory
2 Judgment ("the Complaint") filed by Plaintiff, J.T. Posey Company ("Posey"), as
3 follows:

4 1. HipSaver admits the allegations in paragraph 1 of the Complaint.

5 2. Paragraph 2 of the Complaint states a legal conclusion to which no
6 responsive pleading is required.

7 3. HipSaver admits the allegations in paragraph 3 of the Complaint.

8 4. Paragraph 4 of the Complaint states a legal conclusion to which no
9 responsive pleading is required. To the extent that this paragraph contains factual
10 assertions, HipSaver admits that it is a corporation organized and existing under
11 the laws of the State of Massachusetts with its principal place of business in
12 Massachusetts. HipSaver further admits that it has done business throughout the
13 United States and in the State of California, including the Central District of
14 California.

15 5. HipSaver admits the allegations in paragraph 5 of the Complaint.

16 6. HipSaver admits the allegations in paragraph 6 of the Complaint.

17 7. Paragraph 7 of the Complaint states a legal conclusion to which no
18 responsive pleading is required. To the extent that this paragraph contains factual
19 assertions, HipSaver admits that the parties entered into a settlement agreement on
20 September 22, 2004.

21 8. HipSaver admits the allegations in paragraph 8 of the Complaint.

22 9. HipSaver is without knowledge or information sufficient to form a
23 belief as to the truth of the allegations in paragraph 9 of the Complaint.

24 10. HipSaver is without knowledge or information sufficient to form a
25 belief as to the truth of the allegations in paragraph 10 of the Complaint.

26 11. HipSaver is without knowledge or information sufficient to form a
27 belief as to the truth of the allegations in paragraph 11 of the Complaint.

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1. A preliminary injunction halting all further publication, display, distribution, or reference to "an independent laboratory study that was conducted to determine the most effective impact absorbing material";

2. A preliminary injunction halting all further publication, distribution, or reference to disported parts of the Garwood Laboratories study;

3. A preliminary injunction requiring Posey to publish and pay for distribution of a corrective statement to its entire sales forces and to all customers and persons and entities set out in its marketing lists;

4. A preliminary injunction requiring Posey to pay for HipSaver's publication of corrective advertising;

5. Judgment for HipSaver on all its claims before the court;

6. Damages and multiple damages, including three times Posey's Profits to be awarded to HipSaver;

7. Interest, costs and attorney fees;

8. A permanent injunction; and

9. Such further relief as the trial court deems just and proper.

DATED: June 7, 2005

ATKINSON, ANDELSON, LOYA, RUUD &
ROMO

By: 

Mark T. Rahn
Edward C. Ho
Scott K. Dauscher
Aaron V. O'Donnell
Attorneys for THE HIPSAVER
COMPANY, INC.

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